

## ADMINISTRATIVE INITIATIVE

### STATE OF HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS RANDOM COMPLIANCE CHECK STANDARDS

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**TITLE: RANDOM COMPLIANCE REVIEWS**

**NUMBER: AI 2005-3**

**HRS CHAPTERS: 104**

**REPLACES:**

**HAR: Chapter 12-22**

**ISSUED: 4/25/05**

**DIVISION(S)/AGENCY(S): WAGE STANDARDS**

**APPROVED BY: \_\_\_\_\_**  
**NELSON B. BEFITEL**

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#### ADMINISTRATIVE INITIATIVE DISCLAIMER

This Administrative Initiative is designed to provide general information in regard to current initiatives, opinions, policies, and/or guidelines of the Hawaii Department of Labor and Industrial Relations. It is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable in all situations. This Administrative Initiative does not replace applicable Hawaii Revised Statutes or Hawaii Administrative Rules. If additional clarification is required, the applicable division or agency administrator should be consulted.

#### **A. Purpose**

The purpose of this Administrative Initiative is to establish guidelines and standards for the Department of Labor and Industrial Relations (DLIR) as administered through the Wage Standards Division (WSD) in implementing a program of regular Random Compliance Checks under Chapter 104, Hawaii Revised Statutes, Wages and Hours of Employees on Public Works, and related administrative rules.

The purpose of the Random Compliance Checks Program under Chapter 104, Hawaii Revised Statutes, is to:

1. Educate, facilitate, and encourage voluntary compliance;
2. Establish a working relationship with contractors; and
3. Adopt an objective approach to selecting contractors by instituting random compliance checks on public works construction projects.

#### **B. Goal**

The goal of the Random Compliance Checks Program is to review 35 contractors each quarter from a randomly-generated list, for a total of 140 annual compliance checks conducted on Oahu and the neighbor islands.

### **C. Duration of the Initial Project**

The duration of the initial project under this Initiative will be from January 2005 to December 2005.

### **D. Process of Random Selection and Investigation**

The process of random selection will be directed by the Research and Statistics Office (R&S) of the DLIR. Each quarter a random list of contractors is generated from a compilation of Notices to Proceed received seven to nine months prior to the end of the quarter from the Department of Accounting and General Services and the Department of Transportation. Additionally, Chapter 104 contracts awarded that are listed in the BIDService Weekly are included.

The WSD's Compliance Branch will review the random list generated by R&S and eliminate the contractors who have been investigated within the last 12 months. Of the remaining contractors, the Compliance Branch will conduct compliance checks during the quarter.

Specialists will notify the contractor of a random compliance check via an appointment letter (see Exhibit A, Form 104-3R). The letter will inform the contractor of the proposed investigation date, the project and records to be reviewed, and who to contact. The audit procedure is as follows:

- Hold an opening conference with the owner, partner, or an officer of the firm. To educate the contractor, Chapter 104 Employer Instructions (see Exhibit B, Form 104-2) will be reviewed and explained.
- Examine the contract and specifications, certified and actual payrolls, including a breakdown of fringe benefits, daily time records, payroll journals, payroll ledgers, payroll check register, and canceled payroll checks for employees.
- Review the findings with the owner, partner, or officer of the firm.

The time frame for the random compliance check investigation will depend on whether violations are found. If no violations, on-site compliance checks should generally last no more than four hours; however, if discrepancies are found, the length of time will depend upon several factors, including the contractor's cooperation, number of employees involved, and size of the project.

### **E. Director's Chapter 104 Warning Notice Policy**

The Director of the DLIR has the discretionary authority to promote voluntary compliance through education and may therefore issue a Warning Notice (see Exhibit C, Form 104WARN) before issuing a Notification of Violation (NOV) as set out by the criteria below. This notice will serve as a warning to the contractor and as an opportunity to voluntarily comply with Chapter 104, HRS, Wages and Hours of Employees on Public Works Law, when discrepancies are found. A copy of the Warning Notice will be sent to the contracting agency.

Contractors who are issued a Warning Notice will be given a one-week opportunity to correct any and all discrepancies found. For example, if the contractor pays wages found due in full within five days of the warning, no NOV will be issued and the investigation will be concluded. The issuance

of a Warning Notice will be limited to only once within a four-year period. If the contractor fails to use this opportunity to correct the discrepancy, a NOV will be issued and applicable penalties will be assessed. Depending on the investigation and findings, specialists may need to re-visit the employer before issuing the NOV.

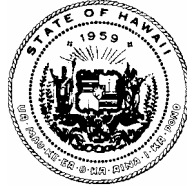
A Warning Notice will be issued according to the following criteria:

- § Non-monetary violations, including failure to pay weekly or within five working days after the end of the pay period, failure to post the Wage Rate Schedule (WRS) on the job site or provide a copy of the WRS to each laborer or mechanic not subject to a collective bargaining agreement, and failure to submit correct and complete certified payrolls on a weekly basis; or
- § Monetary violations amounting to **\$250.00 or less**; and
- § No prior Warning Notice issued within the last four years.

### **Delegation of Authority**

The Director of the DLIR delegates his discretionary authority to issue a Warning Notice in accordance with the above guidelines to the WSD's Administrator.

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**STATE OF HAWAII**  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
WAGE STANDARDS DIVISION  
830 PUNCHBOWL STREET, ROOM 340  
HONOLULU, HAWAII 96813

June 2, 2005

\*Employer\*  
\*Address\*  
\*City, State, Zip Code\*

Project: \*Name of Project\*  
\*Project #\*

Dear Sir/Madam:

The Department of Labor and Industrial Relations has implemented an administrative initiative for random compliance checks as part of our goal to continually improve services to our community. Accordingly, the Wage Standards Division has expanded compliance checks to include education and assistance to all contractors working on State and county public works construction projects under Chapter 104, HRS, Wages and Hours of Employees on Public Works Law.

Your firm has been randomly selected for a compliance check on **\*date\*** at **\*time\***, at your place of business. The audit procedure is as follows:

1. I will hold an opening conference with the owner, partner, or an officer of the firm, at the designated time and place.
2. After the brief opening conference, I will examine the contract and specifications, certified payrolls, including a breakdown of fringe benefits paid, daily time records, payroll journals/ledgers, payroll check register, and cancelled payroll checks for all employees as needed. Please have these records available at the same designated time and place to facilitate the audit.
3. Finally, I will review the findings with the owner, partner or officer of the firm.

**Please call me at (808) 586-\_\_\_\_\_ to confirm the scheduled date and time.**

Very truly yours,

Labor Law Specialist  
Compliance Branch

*Exhibit A - Appointment Letter*



## EMPLOYER INSTRUCTIONS

### CHAPTER 104, HRS WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS LAW

PROJECT: \_\_\_\_\_  
\_\_\_\_\_

- ☐ **Section 104-2(b) Prevailing wages** not less than that contained in applicable wage rate schedule.
- ☐ **Section 104-2(c) Overtime** not less than one and one-half times basic hourly rate, plus fringe benefits, for all hours worked on a Saturday, Sunday, legal State holiday, and after eight hours on any other day.
- ☐ **Section 104-2(d)(1) Frequency of payment:**
- ☐ Not less than once a week
  - ☐ Within 5 working days after end of payperiod
  - ☐ Pay unconditionally without deduction or rebate except as allowed by law
- ☐ **Section 104-2(d)(2) Wage Rate Schedule:**
- ☐ Post at job site
  - ☐ Provide copy to each laborer and mechanic not subject to a collective bargaining agreement
- ☐ **Section 104-3 Payrolls and record keeping requirements:**
- ☐ Correct and complete certified copies of payrolls submitted weekly to contracting agency
  - ☐ Certified payrolls (CP) and payroll records shall contain:

CP	PAYROLL
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Employee's full name and home address  
Appropriate job classification  
Rate of pay (base plus all applicable fringe benefits)  
Hours worked each workday and total hours worked each workweek  
Total weekly straight time earnings, total weekly overtime earnings, total weekly gross earnings, amount and purpose of each deduction, net wages paid, and date of payment

- ☐ Records must be made available for inspection by the Director of Department of Labor and Industrial Relations or an authorized representative.
- ☐ Records must be kept by all contractors during the course of project and for three years thereafter.
- ☐ **Conduct a self-audit of this project and all other projects subject to Chapter 104, HRS, within the last three years, and make appropriate adjustment and restitution of any and all discrepancies found.**

I have been informed of the requirements of the law and agree to take corrective action on the items checked. A copy of Chapter 104, HRS, and related administrative rules is available on the department's web page at [www.hawaii.gov/labor](http://www.hawaii.gov/labor).

I understand that penalties for violations will be assessed as provided in Section 104-24, HRS.

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Signature of Owner, Partner or Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Explained by: \_\_\_\_\_

\_\_\_\_\_  
Labor Law Specialist

\_\_\_\_\_  
Phone

State of Hawaii  
Department of Labor and Industrial Relations  
WAGE STANDARDS DIVISION

**WARNING NOTICE**

Date:

Contractor:

Address:

Project(s):

This Notice serves as a warning and an opportunity to comply with Chapter 104, HRS, Wages and Hours of Employees on Public Works Law. Our investigation of the project(s) specified above revealed the following violations:

- ☐ Failure to pay prevailing wages and/or overtime [§104-2(b), 104-2(c), HRS]
- ☐ Failure to pay wages weekly or within 5 working days after end of pay period [ ' 104-2(d)(1), HRS]
- ☐ Failure to post current wage rate schedule or provide copy to each laborer and mechanic not subject to a collective bargaining agreement [ ' 104-2(d)(2), HRS]
- ☐ Failure to submit certified payrolls on a weekly basis [ ' 104-3(a), HRS]
- ☐ Incomplete/incorrect certified payrolls [ ' 104-3(a), (b), HRS]  
(payment date; job classification; apprentice indenture date, step or percentage)
- ☐ Submit a corrected copy of your certified payroll for week(s) ending \_\_\_\_\_ through \_\_\_\_\_  
to:
  - ☐ Department of Labor and Industrial Relations  
Wage Standards Division  
830 Punchbowl Street, Room 340  
Honolulu, HI 96813  
Fax number: 586-8766
  - ☐ Contracting Agency
  - ☐ General Contractor
  - ☐ Other

Deadline for corrective action is \_\_\_\_\_.

**Failure to comply will result in a Notification of Violation with penalties as provided by law.**

If you have any questions, please call (Name of Specialist) at (808) 586-0000.

*Exhibit C – Warning Notice*